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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Northwest Heritage Consultants

File: B-299547

Date: May 10, 2007

William S. Hanable, Northwest Heritage Consultants, for the protester.
Sherry K. Kaswell, Esq., and Alton E. Woods, Esq., Department of Interior, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly declined to accept Architect-Engineer Qualifications Statements submitted after closing date for such submissions where there is no evidence that improper government action caused the United States Postal Service's failure to make timely delivery of the submissions to the agency.

DECISION

Northwest Heritage Consultants protests the Department of Interior, National Park Service (NPS) Pacific West Region's rejection as late of its Architect-Engineer (A-E) Qualifications Statements submitted in response to solicitations Nos. N8078070176, N8078070177 and N8078070178, issued by NPS for the acquisition of A-E services for historic preservation design services at regional offices in Oakland, Seattle, and Honolulu. Northwest argues that the agency should have accepted its submissions because the protester sent them by United States Postal Service (USPS) Express Mail, and because the protester believes the USPS carrier attempted to deliver the submissions prior to the closing time for receipt.

We deny the protest.

BACKGROUND

On November 17, 2006, NPS published three notices in FedBizOpps seeking Letters of Interest and A-E Qualifications Statements. Agency Report (AR), Tabs VIII A-C. The notices, as amended, required vendors to submit their responses by 2 p.m. on December 22, 2006. Responses were to be mailed or hand-carried to:

National Park Service, Pacific West Regional Office
ATTN: Gary C. Harris
1111 Jackson Street, Suite 700
Oakland, CA 94607

The following information was to be placed on the outside of the sealed envelope containing each response: the solicitation number/title; the due date; and the closing time. All three solicitations provided that late responses would be handled in accordance with the provisions of Federal Acquisition Regulation (FAR) § 15.208.

By the December 22 closing time, the agency received numerous timely submissions in response to each of the three solicitations. No response was received from the protester.

Five days later, on December 27, the contracting officer (CO) received a Federal Express (FEDEX) package from Northwest that did not identify, on the face of the envelope, the solicitation number or closing time. CO's Statement at 1. On December 28, Northwest sent an email to the CO inquiring about the status of its responses to the three solicitations. The CO states that he then examined the package, opened the envelope and discovered three submissions from Northwest. Id. By letters dated January 8, 2007, the CO advised Northwest that its submissions in response to the three solicitations were received by NPS on December 27, which was after the date and time specified in the solicitations, and that the submissions would not be evaluated or considered for award. AR, Tab V, CO's Letters to the Protester.

On January 10, Northwest sent an email to the contracting officer explaining that the FEDEX package was its second attempt to deliver its submissions to the agency. AR, Tab IV, Jan. 10 Email. The protester stated that an earlier package of submissions was sent by USPS Express Mail, and asserted that the USPS carrier attempted to deliver the submissions prior to the deadline, but found no one available to sign for the package. The protester included a copy of the USPS tracking record which indicated that the submissions were mailed on December 20, and stated, in its entirety, "Notice Left, December 22, 2006, 11:22a.m., Oakland, CA 94607." Protest, attach. 3. On the basis of this evidence, Northwest requested the CO to reconsider his decision to reject this submission as late.

By letter dated March 5, 2007, the CO denied Northwest's request on the basis that there was insufficient acceptable evidence to establish that Northwest's submissions were received by the government prior to the date and time set for receipt of submissions. The CO explained that pursuant to FAR § 15.208, Northwest's submissions were late and could not be evaluated. AR, Tab III, Mar. 5 Letter at 2. The CO also explained that NPS's West Regional Office is attended,

24 hours per day, by uniformed building security personnel stationed at the main entrance and lobby area where all USPS and FEDEX package deliveries are made. Northwest filed this protest with our Office on March 13.

DISCUSSION

Northwest first argues that the agency should accept and evaluate its submissions because, in the protester's view, the USPS records show that delivery was attempted prior to the closing time, but could not be completed. Thus, the protester contends that the agency must have failed to make proper arrangements to receive submissions. The protester also argues that since its submissions were not proposals, but merely A-E Qualifications Statements--the evaluation of which are used only to qualify potential vendors for inclusion on a list for issuance of task orders at future dates--acceptance and evaluation of its submissions despite their late receipt causes no harm to other offerors.

It is the responsibility of each firm to deliver its proposal (or here A-E Qualifications Statements) to the proper place at the proper time, and late delivery generally requires rejection of the submission. Sencland CDC Enters., B-252796, B-252797, July 19, 1993, 93-2 CPD ¶ 36 at 3. Where late receipt results from the failure of a vendor to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late offer may not be considered. Axtec Dev.Co., B-256905, July 28, 1994, 94-2 CPD ¶ 48 at 3. An offer that arrives late may only be considered if it is shown that the paramount reason for late receipt was improper government action, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that made it impossible for the offeror to deliver the proposal on time. Id.

As an initial matter, the agency denies receiving or rejecting the Northwest submission package that was the subject of the alleged delivery attempt by the USPS carrier. Instead, NPS explains that it followed its standard procedure for receipt and acceptance of proposals on December 22, 2006. In this regard, since the designated installation is a secured facility manned by security personnel on a 24-hour basis, deliveries entering the building lobby are stopped at the security desk, while the guard calls the NPS mailroom to advise that a package had arrived, and needs to be retrieved. CO's Statement at 3. If mailroom personnel are not available, the practice is for building security personnel to call the contracting and general services offices directly.

Moreover, the agency provided a declaration from the security guard who covered the post on the date and time in question, and the guard states that no notice of an attempted delivery was left by the USPS on that date, and that there were no delivery problems that day. Declaration of Security Guard, Apr. 11, 2007. In addition the CO

states that several other proposals were hand-carried to the agency on December 22, and that, in each case, security personnel called to advise that a package had arrived. Upon receipt of these calls, the CO personally greeted individuals seeking to deliver the submissions and took possession of the submissions in the building lobby. Finally, the CO explains that both mailroom and security personnel were aware that the CO was receiving proposals that day.

In our view, the evidence submitted by the protester does not establish that the agency actually received the protester's submissions or that there was ever an attempt to deliver the submissions to the NPS facility before the closing time established in the solicitation. As explained above, the record here, at best, only demonstrates that the USPS carrier attempted to deliver the protester's submissions somewhere in Oakland at 11:22 a.m. on December 22. There is also no evidence that the NPS failed to make proper arrangements for deliveries, or in any way mishandled the submissions. Instead, numerous other proposals were received throughout the day, and the security guard on duty has submitted a sworn statement explaining that there were no delivery problems that day. Under these circumstances, we think the agency properly refused to accept the protester's submissions when they were subsequently delivered by FEDEX.

Alternatively, Northwest asserts that since the submissions here were only Qualifications Statements, and not proposals, no harm will result from the agency evaluating its untimely submissions. For the reasons below, we disagree.

The FedBizOpps notice specifically stated a date and time for delivery of these submissions and warned vendors that late responses would be handled in accordance with FAR § 15.208. We have recognized that even when the submissions at issue are not proposals, the late submission rules alleviate confusion, ensure equal treatment of all competitors, and prevent one firm from obtaining any unfair competitive advantage that might accrue where only one firm is permitted additional time to prepare its submissions for evaluation by the agency. See Zebra Techs. Int'l, LLC, B-296158, June 24, 2005, 2005 CPD ¶ 122 at 3. (agency reasonably declined to waive a late submission of past performance information--requested by the solicitation prior to quotes, and by a date certain--because waiving the clear submission deadline for the protester would effectively confer a competitive advantage not provided to other offerors). While the government may lose the benefit of more advantageous terms included in a late submission, protecting the integrity of the competitive procurement process by ensuring fair and equal treatment among competitors is of greater importance than the possible advantage to be gained by considering a late submission in a single procurement. Id.

Lastly, the protester maintains that it is a veteran-owned emerging small business and may suffer material harm if it is denied the opportunity to be considered as a potential provider of such services. While we recognize that denying the protester an opportunity to participate in these procurements may have an adverse affect on

the protester, acceptance of the protester's untimely submissions is unfair to other vendors who timely submitted responses and inconsistent with protecting the integrity of the procurement system.

The protest is denied.

Gary L. Kepplinger
General Counsel